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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1418

ENSO-GUTZEIT O/Y, FINN LINES, LTD. O/Y and CONNECTICUT TERMINAL CO., INC.,

Petitioners,

—against—

ROBERT SIDEREWICZ,

Respondent.

PETITIONERS' BRIEF IN REPLY

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Statement

Petitioners find it necessary to submit this short Brief in Reply to correct certain factual errors in Respondent's Brief.

The Facts

Respondent states (p. 2) there was a "precise printed" requirement in the Safety & Health Regulations for Longshoring (29 CFR 1404.81 (e)), that each draft be limited to 8 bales. The regulation makes no such provision (see p. 14 Petition).

Respondent states that the addition of the ninth bale resulted in sixteen hooks lying scattered on the dock (pp. 2 & 3). Respondent then goes on to say that after the ninth bale was untied, a signal was given and the hooks were

taken up. Possibly to create the impression that the hooks had to be dragged, since scattered, respondent has omitted his own undisputed testimony.

Tr. Page 66:

> "I was on the end and it was my job to take the ropes and pull them together and all the hooks would come into a little pile. I nodded to Mr. Sweeney, the signalman, that they were clear."

Bartnicki said, Tr. 26:

> "Q. I believe you testified it was Mr. Siderewicz who gathered the hooks together. A. Siderewicz."

While there may have been conflict among respondent and his witnesses as to whether or not he was actually holding the hooks at the time, it is at least incontrovertible that he had gathered them together before they were taken up.

The Conflict With *Usner v. Luckenbach Overseas Corp.*, 400 U.S. 494

Respondent observes (p. 4) that the Court of Appeals cited and applied both the *Usner* and *Zim Israel Navigation* v. *Tarabocchia*, 401 U.S. 930 decisions. While the Court of Appeals most certainly mentioned these controlling authorities, neither the Court of Appeals nor Respondent has undertaken a comparative factual analysis of these decisions as Petitioners have done and which they urge this Court to do. It is Petitioners' position that the Court of Appeals did not apply these authorities.

Petitioners predict that *Usner* will become meaningless if the proposition of the Court of Appeals be upheld that

unseaworthiness liability may be imposed on a shipowner in a situation where it becomes "more likely" that plaintiff's fellow employees will thereafter negligently bring about an accident.

Dated: New York, N. Y.
June 1, 1972

Respectfully submitted,

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